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C O N F I D E N T I A L SECTION 01 OF 02 DJIBOUTI 000767

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FOR OBO/REPM/AQD; ALSO FOR AF/EX AND AF/E

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TAGS: [ABLD](#) [AMGT](#) [PREL](#) [PGOV](#) [DJ](#)

SUBJECT: DJIBOUTI NEC SITE ACQUISITION

REF: DJIBOUTI 0741 (AND PREVIOUS)

Classified By: AMBASSADOR MARGUERITA D. RAGSDALE  
FOR REASON 1.4 (B) AND (D).

1. (U) At the invitation of the Djiboutian Ministry of Foreign Affairs, Ambassador, Management Officer and General Services Officer met on June 1 with representatives of MFA, Mohamed Ali Hassan, Director of Bilateral Relations, and Secretary General Badri Ali Bogoreh. The purpose of this

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meeting was for MFA to hand over to the Embassy Decree number 2004-0098/PR/MEFPCP dated May 29, 2004, signed by President Guelleh.

2. (SBU) The Decree grants the USG 40,321 square meters of land in Djibouti's Haramous district for construction of a new embassy. MFA representatives also wanted to finalize payment terms and conditions of the land purchase. Both parties agreed the land would be acquired at the Embassy's offer price of \$1.8 million. This would exclude the small plot of land approximately 7,000 sq. meters, adjoining the proposed site.

3. (U) Ambassador raised the concern that Mohamed Ali Yamani of Maya Trading Real Estate Development Co. (Maya) could subsequently interfere in the transaction by claiming land ownership based on the urban development contract signed by Maya and the Government of Djibouti dated February 4, 2004, and a previous Presidential Decree (2004-0026) ratifying the transaction. The contract provides Maya with a temporary land grant ("concession provisoire") of 840,000 sq. meters for which payment is due in five annual installments starting in 2006. The contract's seventh article obliges Maya to begin development during the first half of 2004. While it is the Government of Djibouti's position that Maya holds a temporary grant only, Yamani may seek clarification with the Government of Djibouti regarding land title covered in the urban development contract. The MFA representatives underscored that the Djiboutian Government remains titleholder of the proposed NEC site and chooses to sell the property to the USG.

4. (U) The present Decree is an official decision by President Guelleh and reflects a commitment taken at Cabinet level. The decision will be followed up, reportedly this week, with a diplomatic note. For the Government of Djibouti, this note and Decree 2004-0098/PR/MEFPCP, should be interpreted as having full force. For the MFA, any further dealings related to Yamani's claim would only cloud the transaction. Ambassador affirmed our preference to work solely with MFA representatives to close the property deal. In response to Hassan's inquiry as to when payment could be made, Ambassador said she believed payment could be processed within 30 days of the closing and requested that the MFA specify in its diplomatic note preferred payment method and terms. The Management Officer stressed the need to move as soon as possible to finalize this transaction since construction of the NEC is likely to commence within the next two years.

5. (U) Later the same day, Ambassador, Management Officer and General Services Officer met with the Embassy's legal counsel, Alain Martinet, to understand where the USG stands legally if it proceeds with purchase from the Government of Djibouti. Martinet first remarked that the present Decree does not identify which lot of Maya's temporary grant will be sold to the USG. He also noted that before Yamani's urban development contract was signed, OBO/REPM/AQD's visit in December 2003 marked the Government's promise to sell the Haramous property to the USG. It is now incumbent upon the Government to consult with Yamani to clarify the status of the urban development contract. Martinet advised the USG not to approach Yamani directly on these issues in order to leave the matter for resolution between the Government of Djibouti and Maya.

6. (U) With the assistance of Ibrahim Hamadou, Director of Land Records and Revenues at the Ministry of Finance, Martinet will confirm the legal titleholder of the proposed NEC site. This is recorded, he said, in Djibouti's land registry ("Livre foncier"). Hamadou could also check the exact location of the land plot referenced in the present

Decree. Finally, Martinet would verify ownership of the adjoining lot to the proposed NEC site. To protect the USG's interests, Martinet advised that the Government of Djibouti should issue another Decree stating the primacy of the current Decree over both the previous Decree involving Maya and the urban development contract. Without an accord between the Djiboutian Government and Maya, he said, it would be possible for Yamani to seek damages from Djibouti, including return of the land plot. Such a dispute would be resolved by international arbitration and the Paris court system, according to their contract. However, should the matter go to court, enforcing the ruling in Djibouti will be problematic. Martinet could not be specific as to the consequences for the USG, but indicated it would be disruptive (legally/public relations?). It is now important for the USG to finalize the transaction with MFA and obtain a permanent land grant ("concession definitive"), Martinet said. He continued that immediately following the transaction, the Embassy should also install a provisional perimeter fence around the plot to indicated ownership and to ensure that others do not build on it.

17. (U) Embassy will pass copy of promised diplomatic note referenced in para 4 as soon as MFA provides.

18. (C) Comment: While the Government of Djibouti insists its May 31 Presidential Decree overrides any pre-existing contract, we are not certain if Yamani, or binding law, will hold the same view. This will be an especially pertinent point if Martinet determines that Yamani is legal titleholder, after an examination of records. If Yamani challenges and heads to arbitration, it will be a matter between Yamani and the Government, but could possibly delay our ratification of purchase and eventual construction. He may also choose to bring the USG into a legal deliberation. We do not believe the Government of Djibouti plans to coordinate with Yamani.

19. (C) Comment continued: The nature of Yamani's contract also raises issues as the Government of Djibouti and Martinet told us that the contract sets a June 30 deadline for Yamani to begin preparation of the Haramous tract or the contract is null and void. We will need to proceed carefully and should await the MFA's diplomatic note before deciding next step.

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